

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LILIANA CECCOTTI and)	
FEDERICO CECCOTTI)	
)	
Plaintiffs Below, Appellants,)	
)	
v.)	C.A. No.: 2006-10-313
)	
JAMES LEIGHT, JEAN FLORATOS,)	
GERASIMOS FLORATOS and)	
DAVID TABUSH,)	
)	
Defendant Below, Appellants.)	

Date Submitted: December 22, 2006
Date Decided: January 16, 2007

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ORDER ON APPELLEES' MOTION TO DISMISS

On October 11, 2006, the court below entered judgment in favor of plaintiffs Liliana and Frederico Ceccotti ("Appellants") and against defendants James Leight, Jean Floratos, Gerasimos Floratos and David Tabush ("Appellees"). On October 25, 2006, Appellants filed their appeal in this Court. On November 7, 2006, Appellees moved to dismiss under the Mirror Image Rule, alleging that Appellants' Complaint on Appeal added new issues not addressed in the original complaint and thereby deprived this Court of jurisdiction to hear the appeal. On November 8, 2006, Appellants filed an amended complaint, purportedly curing any defects in the original Complaint on Appeal. After a

hearing on December 22, 2006, the Court reserved decision. This is the Court's final decision.

ANALYSIS

This motion raises two procedural questions. The first question is whether, on an appeal de novo to the Court of Common Pleas, the appellants can cure a violation of the Mirror Image Rule by amending their complaint after the fifteen-day period allotted to perfect an appeal has expired. If so, the second question is whether the appellants may amend their complaint by right, where the opposing party has filed a motion to dismiss but has not yet filed an answer to the complaint.

Court of Common Pleas Civil Rule 72.3(a), governing appeals de novo, requires that an appellant file a notice of appeal "within 15 days from the entry of the final judgment, order, or disposition from which an appeal is permitted by law." The Mirror Image Rule, codified in Rule 72.3(c), further states that "[a]n appeal to this court that fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds."

Although amendment in an appellate proceeding is sometimes permissible to correct a procedural defect, amendment cannot correct a jurisdictional defect. *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969). Where a statute has been construed as jurisdictional, a party's failure to comply with the statute strips the court of jurisdiction to hear the appeal. *Id.* Thus, a party cannot cure a jurisdictional defect by amendment after the time permitted to perfect the appeal has expired. *Id.* More specifically, this Court has held that a party cannot amend to correct a mirror image violation after the fifteen day time period permitted to perfect the appeal has expired. *Kellam v. Seward*, 2006 WL

1476870, at *1 (Del. Com. Pl.) (stating that an appellant cannot cure a jurisdictional defect under the mirror image rule after expiration of the time permitted to perfect the appeal).

In this case, Appellants' Complaint on Appeal clearly violates the Mirror Image Rule. While the complaint filed in the Justice of the Peace Court raised the contractual issues of rent, late fees, fines, and costs of repairing or otherwise maintaining the rental property in question, the Complaint on Appeal filed in this Court added new issues under the tort theory of intentional infliction of emotional distress. Indeed, during the December 22, 2006 hearing on this matter, Appellants conceded that the original Complaint on Appeal was in violation of the Mirror Image Rule precisely because of these additional claims.

The procedural history of this appeal also shows that Appellants did not correct this violation within the time prescribed by statute. The Justice of the Peace court entered its judgment on October 11, 2006. Appellants filed their defective Complaint on Appeal on October 25, 2006. Thereafter, Appellants made no attempt to amend their complaint until November 8, 2006. Consequently, this Court finds that Appellants failed to cure their appeal's jurisdictional defect before the expiration of the statutory, fifteen-day period, thereby stripping this Court of any jurisdiction to hear their appeal.

The Court's determination that Appellants failed to timely cure a jurisdictional defect precludes any consideration of the second issue raised. Therefore, the question of whether Appellants could have amended their complaint by right prior to the filing of an Answer is rendered moot, and the Court makes no decision on that issue.

ORDER

For the aforementioned reasons, Appellees' motion to dismiss the appeal is hereby GRANTED.

IT IS SO ORDERED this 16th day of January, 2007.

Joseph F. Flickinger III
Judge